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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**Case No. 3:21-cv-261-ECF**

LIZBETH LUZ ROSALES et al.,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., et al.,

Defendants.

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' ADMINISTRATIVE  
MOTION TO CONSOLIDATE  
MOTION HEARINGS FOR  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION  
AND CLASS CERTIFICATION  
WITH DEFENDANTS' MOTION  
TO DISMISS AND MOTION TO  
TRANSFER VENUE**

**I. INTRODUCTION**

Defendants latest attempt to sabotage relief for immigrants by running out the clock is disguised as an opportunity for "the Court may hear the threshold issue of venue issue first before ruling on a preliminary injunction or class certification" Dkt. No. 114 at 2.

Under 28 U.S.C. § 1404(a), a party may bring a motion for transfer at any time. a party

DEFENDANTS' ADMINISTRATIVE MOTION TO CONSOLIDATE MOTION HEARINGS  
FOR PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND CLASS  
CERTIFICATION WITH DEFENDANTS' MOTION TO DISMISS AND MOTION TO  
TRANSFER VENUE  
CASE NO. 21-CV-00261-EMC

may bring a motion for transfer at any time." *Alec L. v. Jackson*, No. C-11-2203 EMC, 2011 U.S. Dist. LEXIS 140102, at \*5 n.1 (N.D. Cal. Dec. 6, 2011). Important factors for the court to consider about Defendants' motion to consolidate these hearings is: the timing of Defendants' challenge, the substance of the challenge, and the prejudice Defendants' timing has for both Plaintiffs and putative class members.

## II. THE TIMING OF DEFENDANTS' VENUE CHALLENGE

Defendants could have brought the venue issue before,<sup>1</sup> but waited until last minute to run out the clock.

Did Defendants raise the improper venue defense in their opposition to the motion for preliminary injunction, so the issue could be before the court on the scheduled July 15 hearing? No.

Did Defendants raise the improper venue defense in their June 30 motion, where they argued for a 10-page extension due to their need for "an extensive analysis of the 'TRAC' factors which takes a significant amount of space to address"( Dkt. No. 103 at 2), only to file a brief with just three pages devoted to TRAC factors? Dkt. No. 107 at 23-26. No.

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<sup>1</sup> This is the second time Defendants have attempted to transfer this case away from the Court. Dkt. No. 42. Defendants first transfer attempt was aimed at consolidating this case with the *Anunciato* case, and even included the heading, "Anunciato Was Filed More Than Two Months Prior To This Action." *Id.* at 7. *Anunicato* plaintiffs subsequently dismissed that case, and filed the *Goh* case, one of the cases Defendants now argue, without irony, justifies this case's transfer.

1 Did Defendants raise the improper venue defense at the June 11 status conference, held  
2 three days after the Court dismissed the original plaintiffs that provided the Court venue? No.

3 Did Defendants raise the improper venue defense in its June 9 filing, where they implied  
4 Plaintiffs had filed an action in a different venue, when they had not? Dkt. No. 92 at 2. No.

5 Did Defendants raise the improper venue defense at any time between June 8, after the  
6 Court dismissed the original plaintiffs that provided the Court venue, but directed the remaining  
7 Plaintiffs to file renewed Motions for Class Certification and Preliminary Injunctive Relief, and  
8 July 2, after Plaintiffs incurred four weeks of prejudice as they approach their September 30  
9 deadline? Dkt. No. 91 at 23. No.

10 Further, despite the incredible prejudice to immigrants that Defendants' venue  
11 challenge presents, not once did Defendants' counsel let Plaintiffs' counsel know the motion was  
12 coming before it was filed, despite multiple emails back in forth over the last four weeks. The  
13 motion was a surprise, which is fundamentally wrong in the context of what is at stake for  
14 Plaintiffs.

## 15 **II. The Substance of the Venue Challenge**

16 Defendant Joseph R. Biden, et al., are shamefully arguing that a family residing in  
17 Sonoma, California should not have access to the District Court for the Northern District of  
18 California due to their immigration status.

19 To the extent Defendants need a reminder of how statutory interpretation works, "the  
20 plain language of § 1391(e)(3) allows a plaintiff to bring suit against an officer of the United  
21 States in the judicial district in which the plaintiff [\*14] resides (so long as no real property is  
22 involved in the action). There is nothing in the statute indicating that only the residence of citizens

1 can be considered for meeting this requirement. *Kumar v. Mayorkas*, No. C 12-06470 MEJ, 2013  
 2 U.S. Dist. LEXIS 135924, at \*13-14 (N.D. Cal. Sep. 23, 2013).

### 3 **III. The Prejudice to Plaintiffs of Consolidating the Hearings.**

4 As Plaintiffs explained nearly six months ago, “[e]ach delayed day is another day that  
 5 these individuals risk losing the ability to immigrate to the United States.” Dkt. No. 35 at 4. For  
 6 Plaintiffs and the DV-2021 putative class members, there are only 85 days until the fiscal year  
 7 ends and their chances at the American dream are extinguished.

8 It is important to note that all immigrant applicants must undergo a medical examination  
 9 that includes a Tuberculosis test where Soviet-era vaccines cause many to test positive triggering  
 10 another exam that takes between 6 to 8 weeks (42-56 days) to complete.<sup>2</sup> We learned from the  
 11 *Gomez* litigation last year that it takes 2-3 weeks (14-21 days) before Defendants might begin to  
 12 properly implement a court’s order. Defendants’ proposal to delay preliminary injunctive relief  
 13 28 days, when we are just 85 days before September 30, 2021 deadline, threatens to have  
 14 devastating consequences for most Plaintiffs and putative class members.  
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21 <sup>2</sup> As Defendant Morgan D. Miles noted in his declaration last week, 71 *Rosales* Plaintiffs are  
 22 assigned to the US Embassy Moscow, 21 are assigned to US Embassy Almaty, and 18 are  
 23 assigned to US Embassy Kiev, 10 are assigned to US Embassy Tashkent. Dkt. No. 110 at 8-9.  
 24 (Many more Plaintiffs are assigned to assigned to other embassies located in former Soviet  
 25 Republics that Miles did not note.)  
 26  
 27

1 Dated: July 7, 2021

2 Rancho Santa Margarita, CA

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4  
5 By: /s/ Curtis Lee Morrison

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